



# National Labor Relations Board

## Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED  
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*California Almond Growers Exchange d/b/a Blue Diamond Growers* (20-CA-32930, 33195; 353 NLRB No. 6) Sacramento, CA Sept. 16, 2008. The Board adopted the administrative law judge's dismissal of allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Leo Esparza and Ludmilla Stoliarova. In adopting the judge's finding that the Respondent did not violate Section 8(a)(3) and (1), Member Liebman found it unnecessary to pass on the judge's finding that the General Counsel failed to satisfy his initial burden under *Wright Line*. Assuming arguendo that the General Counsel met his threshold *Wright Line* burden, Member Liebman found, in light of the judge's credibility resolutions, that the Respondent demonstrated that it would have discharged the employees for their rule violations even in the absence of their union activity. Although Chairman Schaumber agreed with the judge that the General Counsel did not meet his initial *Wright Line* burden, he also agreed with Member Liebman that, assuming arguendo that the General Counsel met that burden, the Respondent demonstrated that it would have discharged the employees in any event. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

Charge filed by Longshoremen ILWU Local 17; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Sacramento, Jan. 16-19, 2007. Adm. Law Judge Jay R. Pollack issued his decision May 31, 2007.

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*Dietrich Industries, Inc.* (13-CA-43598, 43718; 353 NLRB No. 7) Hammond, IN Sept. 16, 2008. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate and locking out former striking employees following the Union's unconditional offer on their behalf to return to work and thereby rejected the Respondent's defense that the Union had agreed to withdraw that then-pending unfair labor practice charge when it agreed to terms for a successor collective-bargaining agreement. The Board also adopted the judge's dismissal of allegations that the Respondent violated Section 8(a)(5), (3), and (1) by unilaterally discontinuing health insurance benefits to former strikers who were laid off at the time other strikers were recalled. [\[HTML\]](#) [\[PDF\]](#)

Following a 4-month strike, on Sept. 8, 2006, the Union notified the Respondent that it was offering on behalf of employees to return to work unconditionally. On Sept. 11, 2006, the Respondent replied that it was immediately implementing a lockout, that it would "not offer reinstatement to the striking employees until an agreement is reached," and that it would provide a "final written offer to the Union by close of business on Sept. 14, 2006." The Respondent did not provide the Union with terms for agreement until Sept. 18 and Sept. 20, 2006. The judge observed, *inter alia*, that in locking out employees, an employer must not only tell them that it is doing so in support of its bargaining position, but must also "clearly and fully [inform them] of the conditions they must meet to be reinstated." *Eads Transfer*, 304 NLRB 711, 712 (1991). Thus, the Respondent's failure at the outset of the lockout to offer a contract capable of acceptance or otherwise inform the Union of terms upon which the lockout could be ended rendered the lockout unlawful.

The Board also agreed with the judge that: (1) the evidence does not establish that by accepting the Respondent's Sept. 20 "final company offer," the Union also agreed to withdraw pending unfair labor practice charges; and (2) that the Respondent was merely complying with the terms of the new contract's health care provision when it informed laid off employees who had not returned to work following the strike that they were not covered by the plan.

In ordering that the Respondent provide backpay to the illegally locked out employees from the date the lockout was implemented until they were reinstated, Chairman Schaumber noted that the Respondent did not specifically except to the duration of the backpay period or argue that it should toll as of the date the Union received the Respondent's contract proposal.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Teamsters Local 142; complaint alleged violations of Section 8(a)(1), (3), and (5). Hearing at Chicago, June 28-29, 2007. Adm. Law Judge George Carson II issued his decision Aug. 28, 2007.

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*WeCare Transportation, LLC* (3-RC-11819; 353 NLRB No. 9) Canaan and Weedsport, NY Sept. 17, 2008. The Board reversed the Regional Director's finding that the petitioned-for single facility of long-haul truck drivers at the Employer's Canaan, NY facility was an appropriate unit for bargaining. The Board concluded that the Employer rebutted the single facility presumption, finding that the truck drivers at its facility in Weedsport, NY must also be included in the unit. The Board relied on the substantial degree of temporary employee interchange and functional integration, the weak level of local autonomy, the centralized administration of labor relations and operations, and the fact that all drivers performed the same duties under similar working conditions. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Schaumber and Member Liebman participated.)

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## **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Pepsi Americas, Inc.* (Union de Tronquistas de Puerto Rico Local 901, IBT) Tora Baja, Rio Piedras and Sabana Grande, PR Sept. 16, 2008. 24-CA-10861; JD(ATL)-35-08, Judge William N. Cates.

*Ashley Furniture Industries, Inc.* (Voces de al Frontera) Arcadia, WI Sept. 17, 2008. 18-CA-18737 (formerly 30-CA-17857); JD(SF)-37-08, Judge James M. Kennedy.

*Cadence Innovation, LLC* (Auto Workers) Troy, MI Sept. 17, 2008. 9-CA-43672, et al.; JD-52-08, Judge Paul Bogas.

*Mid-States Express, Inc.* (Teamsters Locals 20 and 24) Cleveland and Toledo, OH Sept. 19, 2008. 8-CA-37168, 37302; JD-49-08, Judge George Alemán.

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## TEST OF CERTIFICATION

*(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding.)*

*J. S. Carambola, LLP, d/b/a Carambola Beach Resort* (Our Virgin Island Labor Union) (24-CA-10951; 353 NLRB No. 8) Davis Bay, St. Croix, VI Sept. 17, 2008. [\[HTML\]](#) [\[PDF\]](#)

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## LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

*(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)*

**DECISION AND ORDER [remanding proceeding  
to Regional Director for further appropriate action]**

*Roma Cleaning, Inc.*, Jamaica, NY, 29-RC-11533, Sept. 17, 2008 (Chairman Schaumber and Member Liebman)

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*(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)*

*American Medical Response of Massachusetts, Inc.*, Boston, MA, 1-RC-22235, Sept. 18, 2008 (Chairman Schaumber and Member Liebman) [amending decision to permit lead system status controllers to vote under challenge]

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